

Juan Hong (CA SBN 234046)
Law Office of Juan Hong, A Law Corp.
4199 Campus Drive, Suite 550
Irvine, CA 92612
Phone: (949)509-6505
Fax: (949) 335-6647
Email: jhong48@gmail.com

Attorney for Plaintiff Hung Nguyen

United States District Court
For the Central District of California
Southern Division

HUNG NGUYEN

Plaintiff,

vs.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA;
FARYAR JABBARI, in his individual
capacity; GREGORY WASHINGTON,
in his individual capacity; DIANE K.
O'DOWD, in her individual capacity;
ENRIQUE J. LAVERNIA, in his
individual capacity; Does 1 through 10.

Defendants.

) Case No.
)
) **(1) Discrimination on the Basis of**
) **Sexual Orientation in Violation of 20**
) **U.S.C. §1681 (Title IX)**
) **(2) Retaliation on the Basis of Sexual**
) **Orientation in Violation of 20 U.S.C.**
) **§1681 (Title IX)**
) **(3) Violation of Equal Protection by**
) **42 U.S.C. §1983; Discrimination and**
) **Retaliation**
) **DEMAND FOR JURY TRIAL**
)
)

Plaintiff, Dr. HUNG NGUYEN ("NGUYEN"), by and through his counsel,
claims and alleges as follows:

1. NGUYEN brings this action against Defendants THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA ("REGENTS"); FARYAR JABBARI
("JABBARI"), in his individual capacity; GREGORY WASHINGTON
("WASHINGTON"), in his individual capacity; DIANE K. O'DOWD
("O'DOWD"), in her individual capacity; ENRIQUE J. LAVERNIA

1 (“LAVERNIA”), in his individual capacity, for compensatory and consequential
2 damages, punitive damages, mental distress, injunctive relief, an award of cost and
3 attorney's fees, prejudgment interest, and other appropriate relief to remedy
4 Defendants’ unlawful employment discrimination on the basis of sex; and
5 retaliation for reporting the complaint.

6 2. Plaintiff NGUYEN has been subjected to discriminatory treatment and
7 retaliatory action based on his sexual orientation.

8 3. In August 2009, NGUYEN was employed by the University of California
9 Irvine as an assistant professor. Throughout NGUYEN’s employment, he did his
10 duties diligently and responsibly. However, instead of recognizing NGUYEN’s
11 service and qualification, Defendants subjected NGUYEN to sex discrimination.
12 To make matters worse, Defendants retaliated against NGUYEN for complaining
13 the mischaracterization of NGUYEN’s work by JABBARI and WASHINGTON,
14 which was motivated by their antigay animus, eventually led to a decision of the
15 termination of NGUYEN’s employment in August 2017.

16 4. The University of California has a clearly established policy that:
17 “Discrimination, including harassment, against University employees on political
18 grounds, or for reasons of race, color, religion, sex, ***sexual orientation***, gender,
19 gender expression, gender identity, ethnic origin, national origin, ancestry, marital
20 status, pregnancy, physical or mental disability, medical condition (cancer-related
21 or genetic characteristics), genetic information (including family medical history),
22 or service in the uniformed services as defined by the Uniformed Services
23 Employment and Reemployment Rights Act of 1994 (USERRA), as well as state
24 military and naval service, or, within the limits imposed by law or University
25 regulations, because of age or citizenship or for other arbitrary or personal
26 reasons.” (Bold italics added.)
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1 **JURISDICTION**

2 5. Jurisdiction is conferred upon this court by 42 U.S.C. §§1983 and 1988, and
3 20 U.S.C. § 1681(a) (“Title IX”), the provisions of 28 U.S.C. §§ 1331,
4 1343(1)(2)(3) and (4), and 2201, 2202, et seq. Equitable and other relief is sought
5 under 42 U.S.C. §1983.

6 6. Plaintiff NGUYEN at all times relevant herein was and is a resident of the
7 County of Orange, State of California.

8
9 **PARTIES**

10 7. Plaintiff NGUYEN was and is a public employee employed by the
11 University of California Irvine (“the University”). NGUYEN is openly gay.

12 8. REGENTS represent a political subdivision of the State of California.
13 (California Gov. Code 12652.5) The corporation known as the Regents of the
14 University of California is the highest administrative authority of the University of
15 California, and has general rule-making or policy-making power in regard to the
16 University, and is fully empowered to operate, control, and administer the
17 University. (Cal. Const., Article IX, section 9)

18 9. Defendants FARYAR JABBARI (“JABBARI”), GREGORY
19 WASHINGTON (“WASHINGTON”), and ENRIQUE J. LAVERNIA
20 (“LAVERNIA”) discriminated and retaliated against NGUYEN and participated in
21 terminating NGUYEN because of his sexual orientation. On information and
22 belief, Defendant JABBARI was born in Iran.

23 10. Defendant JABBARI is an administrator of the University and was acting in
24 the course and scope of his employment as the Associate Dean of the Henry
25 Samueli School of Engineering (“the School”) of the University when he
26 discriminated and retaliated against plaintiff. At all times relevant herein, he was
27 Associate Dean of the School. Defendant JABBARI at all times relevant herein
28

1 was and is a resident of the County of Orange, State of California. JABBARI
2 knew that Plaintiff NGUYEN is gay.

3 11. Defendant WASHINGTON is an administrator of the University and was
4 acting in the course and scope of his employment as the Dean of the Henry
5 Samueli School of Engineering (“the School”) of the University when he
6 discriminated and retaliated against plaintiff. At all times relevant herein, he was
7 the Dean of the School. Defendant WASHINGTON at all times relevant herein
8 was and is a resident of the County of Orange, State of California.
9 WASHINGTON knew that Plaintiff NGUYEN is gay.

10 12. Defendant O’DOWD is an administrator of the University and was acting in
11 the course and scope of her employment as Vice Provost for Academic Personnel
12 of the University when she discriminated and retaliated against NGUYEN. At all
13 times relevant herein, she was Vice Provost for Academic Personnel. On
14 information and belief, Defendant O’DOWD at all times relevant herein was and is
15 a resident of the County of Orange, State of California. On information and belief,
16 she knew that Plaintiff NGUYEN is gay.

17 13. Defendant LAVERNIA is an administrator of the University and was acting
18 in the course and scope of his employment as Provost and Executive Vice
19 Chancellor of the University when he discriminated and retaliated against plaintiff.
20 At all times relevant herein, he was and is a professor in the Department of
21 Chemical Engineering and Materials Science of the School of Engineering.
22 Defendant LAVERNIA at all times relevant herein was and is a resident of the
23 County of Orange, State of California. LAVERNIA knew that Plaintiff NGUYEN
24 is gay.

25 14. Defendant Regents of the University of California (“REGENTS”) operates
26 and governs the University of California (“the University”), a public state
27 university.
28

1 15. The University receives federal financial assistance and is therefore subject
2 to the dictates of Title IX.

3 16. The true names and capacities, whether corporate, associate, individual,
4 partnership or otherwise of defendants Does 1 through 10, inclusive, are unknown
5 to the plaintiff which therefore sue said defendants by such fictitious names. The
6 plaintiff will seek leave of court to amend this complaint to allege their true names
7 and capacities when the same are ascertained. On information and belief, at all
8 relevant times each of the defendants, including Doe defendants, was and is the
9 agent, employee, employer, joint venturer, representative, alter ego, subsidiary,
10 and/or partner or one or more of the other defendants, and was, in performing the
11 acts complained of herein, acting within the scope of such agency, employment,
12 joint venture, or partnership authority, and/or is in some other way responsible for
13 the acts of one or more of the other defendants.

14 **STATEMENT OF FACTS**

15 **Summary of the University Decision**

16
17 17. In July 2009, Dr. NGUYEN was hired as an Assistant Professor in the
18 University's Department of Chemical Engineering and Materials Science ("the
19 Department"). The normal period of service at the rank of assistant professor is six
20 years. (The maximum allowable period of service may not exceed eight years
21 under the Eight Year Rule. Academic Personnel Manual 133.)

22 18. A Handbook of Advice for Tenure-Track and Tenured Faculty,
23 Advancement and Promotion at Irvine, 2008, states that: "There are five levels of
24 faculty peers and faculty administrators who will review a case for promotion to
25 tenure, in the following order: (1) Department, (2) Department Chair, (3) Dean, (4)
26 The Council on Academic Personnel (CAP) and an optional campus Ad Hoc
27
28

1 Review Committee, (5) The Executive Vice Chancellor and Provost, and the
2 Chancellor.”

3 19. In April 2016, the Department’s faculty conducted the promotion and tenure
4 reviews of NGUYEN and voted to recommend him for promotion and tenure. The
5 review was conducted by seventeen (17) faculty members of the Department of
6 Chemical Engineering and Materials Science. Sixteen (16) professors approved
7 NGUYEN’s promotion to Associate Professor. One professor abstained. The
8 procedure for the department’s review sets forth the various factors to be
9 considered: teaching, research and scholarship, and service. In discussing
10 research, the department wrote in its April 7, 2016 letter to Chancellor Howard
11 Gillman that “Professor Nguyen has demonstrated high-quality research
12 contributions in his field, dedicated teaching, and excellent service.... This
13 important work has been published in high-quality journals. He has secured large
14 grants, including a prestigious National Science Foundation CAREER award
15 (\$508k). ... He is Co-Investigator of a significant and highly competitive \$800k
16 grant from the Department of Energy (with \$422k as his portion). He has also
17 received three large awards of computational resources from national centers ...”

18 20. In June 2016, NGUYEN reported new funding from the National Science
19 Foundation as co-PI (with \$150k as his portion). The total “funding as an
20 independent scientist” is significantly large in the amount of \$1,080k. On the
21 contrary, Provost & Executive Vice Chancellor, Enrique J. Lavernia, wrote in his
22 August 2, 2016 letter that “The weaknesses of the case include ***a low overall***
23 ***productivity and funding*** as an independent scientist and concern regarding the
24 impact of his scholarly work.” (Bold italic added.)

25 21. Following the Department faculty’s review and vote, on April 27, 2016, the
26 Department Chair wrote a concurring letter to Chancellor Howard Gillman stating
27 that “I strongly endorse the departmental recommendation in support of the
28 promotion of Professor Hung Nguyen from Assistant Prof., Step III (OS) to

1 Associate Professor, Step 1 with Tenure..... Eight of the nine external reviewers
2 advocate in favor of Prof. Nguyen's promotion."

3 22. The Department forwarded its recommendation, along with the Department
4 Chair's concurrence, to the School of Engineering ("the School") Academic
5 Personnel Advisory Committee (APAC). The Associate Dean, Faryar Jabbari,
6 wrote a letter on May 11, 2016, to the Dean of School of Engineering, Gregory
7 Washington, stating that "The record from UCI Program, which is nearing the end
8 of its seventh year is not substantial. Strong and credible referees have raised
9 substantial questions regarding innovation, novelty and rigor of the main thrust of
10 the program. The confidence and enthusiasm needed for a positive tenure
11 recommendation are lacking. The NSF award, while positive, cannot be
12 determinative for this most important decision a university makes." The letter
13 ended with a statement that "The vote was 4 for non-reappointment and no votes
14 for tenure. This report was approved by all participating voting members." The
15 Associate Dean was not a voting member. There were no signatures of the four (4)
16 voting members. This is a violation of APM 210 e. (2) providing that "The
17 reviews committee has the responsibility of making an unequivocal
18 recommendation. No member should subscribe to the report if it does not
19 represent that member's judgment." On May 11, 2016, letter by the Associate
20 Dean, no member subscribed to the letter to the Dean.

21 23. The Associate Dean, Faryar Jabbari, wrote the letter that is self-refuting.
22 The letter of May 11, 2016, states that "The NSF award, while positive, cannot be
23 determinative for this most important decision a university makes." The Associate
24 Dean's December 1, 2015, letter to Provost & Executive Vice Chancellor self-
25 contradicted by comparing NGUYEN's case to two previous cases from the
26 Department of Chemical Engineering and Materials Science that "In one case, the
27 department strongly recommended one-year extension due to the institutional
28 failure to provide laboratory space and equipment to an experimental program for

1 over a year. That case was much stronger (15 journal papers, 8 while at UCI,
 2 CAREER, etc.). In the second case, after 5 years, there were 18 papers while at
 3 UCI with 9 papers from new and independent projects, and success in grants
 4 (including CAREER).” NGUYEN had 19 journal papers, 10 while at UCI, and
 5 NSF CAREER award. The fact that the Associate Dean gave different reasons at
 6 different times for his decision supports a finding that the reason he ultimately
 7 settled on was fabricated.

8 24. On October 26, 2015, NGUYEN wrote a letter to Diane K. O’Dowd, Vice
 9 Provost for Academic Personnel, reporting Faryar Jabbari’s mischaracterization in
 10 his May 14, 2015 APAC letter to the Dean, Gregory Washington, of his prior work
 11 (i.e., research conducted prior to arriving at UCI) as “modest output with modest
 12 impact.” The four APAC members were Soroosh Sorooshian, Enrico Gratton,
 13 Roger Rangel and Hamid Jafarkhan. On information and belief, two members of
 14 the four APAC members were born in Iran. Faryar Jabbari was also born in Iran.
 15 The APAC letter, written by Faryar Jabbari, reflected three Iranian born members’
 16 opinion. On information and belief, they all knew Plaintiff NGUYEN is gay.

17 25. In the NGUYEN letter to O’DOWD, Vice Provost for Academic Personnel,
 18 NGUYEN inferred potential antigay animus of the Associate Dean, JABBARI, by
 19 stating that “The fact that the prior work was the focus of my tenure review is
 20 strange enough, but that it was characterized as “*modest*” ignores the quantitative
 21 citation evidence and positive evaluations in multiple published reviews by the
 22 scientific community. Given the enormous disparity between how my work was
 23 characterized and my actual achievements, ***I have to wonder what motivates such***
 24 ***statements, which seem to suggest something else other than an objective***
 25 ***evaluation.***” (Bold italics underline is added for emphasis.) O’DOWD did not
 26 inquire or investigate the NGUYEN’s allegation on the motives of JABBARI and
 27 WASHINGTON.
 28

1 26. The entire thirteen (13) tenured faculty in the Department of Chemical
2 Engineering and Materials Science compared NGUYEN's case with five recent
3 successful tenure cases from the department. They concluded that "Examination
4 of five recent successful tenure cases from the department show that Prof.
5 Nguyen's accomplishments fall well within the ranges for number of peer-
6 reviewed publications, graduated doctoral students, and amount of extramural
7 research funding awarded to the candidate. His accomplishments are not near the
8 lower end of the spectrum." None of the five successful applicants were gay or
9 lesbian.

10 27. On May 12, 2016, the Dean of the School, Gregory Washington, and the
11 Associate Dean, Faryar Jabbari, wrote a letter to Provost & Executive Vice
12 Chancellor, Enrique J. Lavernia, stating that "Given the totality of the case, and the
13 recommendation of our APAC colleagues, the file does not engender the
14 confidence that a positive recommendation requires. Our recommendation is for
15 no reappointment." The letter was signed by both the Dean and the Associate
16 Dean. The Associate Dean, Faryar Jabbari, as administrator, signed the two letters,
17 the May 11, 2016 letter from APAC to the Dean, and the May 12, 2016, letter from
18 the Dean, WASHINGTON, to LAVERNIA, Provost and Executive Vice
19 Chancellor. The two letters were included in the NGUYEN's dossier and reviewed
20 by the Council on Academic Personnel and Provost & Executive Vice Chancellor.
21 It is apparent that undue influence by the Associate Dean, an administrator,
22 infected a higher level administrator's review of the NGUYEN's tenure and
23 promotion. The inclusion of the two letters by administrators was in violation of
24 the general principle of shared governance. APM 015 Part I – Professional Rights
25 of Faculty provides that "In support of the University's central functions as an
26 institution of higher learning, a major responsibility of the administration is to
27 protect and encourage the faculty in its teaching, learning, research, and public
28 service." APM 015 Part I 5. states the faculty participation in the governance of

1 the University, as provided in the Bylaws and Standing Orders of The Regents and
2 the regulations of the University, include (c) appointment and promotion of
3 faculty. The Associate Dean, an administrator, violated the professional rights of
4 faculty in the shared governance for NGUYEN's promotion and tenure application.

5 28. At the University level, the 9-person University Council on Academic
6 Personnel (CAP) considered NGUYEN's application. The Council voted six to
7 three to recommends a Promotion to Tenure to Associate Professor, Step I, Irvine
8 scale. The CAP letter of June 20, 2016, states that "Professor Nguyen's research
9 makes an important contribution to modeling and simulation for the study of self-
10 assembly in biomolecules. He has published a number of conference proceedings
11 and peer-reviewed articles of which he was the senior author. He has recently
12 received a prestigious NSF CAREER award, which adds to additional research
13 funding where he is a co-PI, including funding from DOE. His professional
14 activities are on a rising trajectory with active participation in conferences as co-
15 organizer and session chair. His university service and teaching are at the expected
16 level. Finally, he has been a successful mentor of doctoral students, having
17 graduated two students, whom he advised."

18 29. On August 2, 2016, Provost and Executive Vice Chancellor, Enrique J.
19 Lavernia, wrote a letter to Chancellor Howard Gillman recommending for "non-
20 reappointment of Professor Hung Duc Nguyen, effective July 1, 2015." He stated
21 that "The weaknesses of the case include a low overall productivity and funding as
22 an independent scientist and concern regarding the impact of his scholarly work.
23 In my judgment, the weaknesses of the case outweigh the strengths." This
24 statement is in substance the same as that in the Dean's letter signed by the
25 Associate Dean JABBARI and the Dean WASHINGTON.

26 30. Provost and Executive Vice Chancellor disagreed with the recommendations
27 by the two academic senate committees, namely, the Faculty of the Department of
28

1 Chemical Engineering and Materials Science, and the University Council of
2 Academic Personnel. He agreed with the Dean, an administrator.

3 31. Provost and Executive Vice Chancellor's disagreement was heavily based
4 upon the two negative letters by the Associate Dean, Faryar Jabbari. His letters
5 were included in the NGUYEN's dossier in violation of the Academic Personnel
6 Manual (APM).

7 32. If the Executive Vice Chancellor & Provost agree with CAP's
8 recommendation, the file is forwarded to the Chancellor for the final decision. If
9 the Executive Vice Chancellor and Provost disagrees with CAP's recommendation,
10 it may be sent back to CAP for reconsideration. In advising the Chancellor, the
11 Executive Vice Chancellor and Provost can reject the advice of the Council on
12 Academic Personnel, although CAP's recommendation is most often upheld.
13 Thus, the tenure decision is typically a faculty-derived decision rather than an
14 administrative one. Final decision-making power resides with the Chancellor. For
15 the NGUYEN's case, the Executive Vice Chancellor and Provost disagreed with
16 the CAP's positive recommendation. However, he did not send back to CAP for
17 reconsideration.

18 33. The Chancellor retains authority for decisions on promotion to associate
19 professor and full professor, in addition, to the non-reappointment of assistant
20 professors. Decisions on all other academic personnel actions have been delegated
21 to the Executive Vice Chancellor and Provost, the Vice Provost, or to the deans. In
22 the University's letter announcing its final decision, NGUYEN was further
23 informed that, NGUYEN was terminating his appointment on August 31 2017.

24 34. The Provost and Executive Vice Chancellor's letter of August 2, 2016, never
25 mentioned the additional information submitted by the Department Chair to
26 Chancellor Howard Gillman on June 20, 2016. The additional information
27 included the acceptance of nineteenth manuscript, four submitted manuscripts
28

1 under review (which was published later), and new funding from the NSF Division
2 of Materials Research as co-PI. NGUYEN's portion is \$150k.

3 35. On November 22, 2016, the thirteen (13) tenured faculty in the Department
4 of Chemical Engineering and Materials Science requested Provost and Executive
5 Vice Chancellor, Enrique J. Lavernia, "for reconsideration in the tenure decision
6 for Professor Hung Nguyen." The letter of request compared NGUYEN's case
7 with five recent successful tenure cases from the department. The letter states that:

8
9 **"Productivity and Impact of Scholarly Activities:** While each
10 tenure case is different, the totality of Prof. Nguyen's achievements is
11 consistent with other faculty members in the department who have
12 been promoted to tenure over the last few years. Examination of five
13 recent successful tenure cases from the department show that Prof.
14 Nguyen's accomplishments fall well within the ranges
15 for number of peer-reviewed publications, graduated doctoral
16 students, and amount of extramural research funding awarded to the
17 candidate. His accomplishments are not near the lower end of the
18 spectrum. The department is well aware that tenure is not awarded by
19 bean counting; the evidence of his strong scholarly contributions is
20 also reflected in quantitative, analytical evaluation of his scholarly
21 achievements in external review letters. He received positive
22 endorsements for tenure from all but one of the nine external
23 reviewers. Prof. Nguyen took a high-risk approach by investing
24 significant time in developing a novel, complex, multi-scale
25 computational framework with associated methodologies. This
26 investment led to an absence of publications in the earliest years of his
27 faculty position. However, once developed and thoroughly tested,
28 these novel methods enabled him to tackle important challenging

1 problems in nanobiotechnology reported in a series of strong
2 publications in high quality journals. ***Thus the basis for defining his***
3 ***research productivity, impact, and research funding as low is***
4 ***lacking.***” (Bold italics added.)
5

6 36. On December 8, 2016, Provost & Executive Vice Chancellor informed the
7 Department, in substance, of his denial of reconsideration. He stuck to his opinion
8 in his August 2, 2016, letter to Chancellor Howard Gillman recommending for
9 “non-reappointment of Professor Hung Duc Nguyen, effective July 1, 2015.....
10 The weaknesses of the case ***include a low overall productivity and funding*** as an
11 independent scientist and concern regarding the impact of his scholarly work. In
12 my judgment, the weaknesses of the case outweigh the strengths.” (Bold italics
13 added.)
14

15 **Privilege and Tenure Committee’s Perfunctory Investigation and Arbitrary**
16 **Decision**

17
18 37. On September 22, 2016, NGUYEN submitted a grievance alleging that his
19 rights and privileges were violated in the tenure review process. NGUYEN
20 alleged:

21 “(1) Associate Dean Jabbari was present during the APAC meeting on
22 May 9 of 2016 and wrote a report to Dean Washington on behalf of
23 APAC on May 11 of 2016. Then Associate Dean Jabbari also
24 cowrote and co-signed the Dean’s letter to Provost & EVC Lavernia
25 on May 12 of 2016. This clearly demonstrates that APAC is not an
26 independent review body and that there is no separation between
27 APAC and Dean Washington.
28

1
2 (2) At CAP's meetings, the representative from the School of
3 Engineering participates in all discussions related to personnel cases
4 of engineering faculty from any department; it means that the school
5 of engineering representative can discuss cases from his/her own
6 department. In contrast, in APAC's meetings, the representative from
7 an engineering department is not allowed to participate in the
8 discussion of any personnel case from his/her department. Indeed,
9 during the APAC meeting on May 9 of 2016, Professor Farghalli
10 Mohamed, the representative from the department of Chemical
11 Engineering and Materials Science, was excluded from attending and
12 participating in the discussion of Nguyen's case. This practice
13 prevents the representative from providing additional information or
14 explanation (without being an advocate) and monitoring the
15 discussion in a fair manner.

16
17 (3) The file materials made available to Nguyen by AP indicate that
18 when his personnel case was resubmitted by the department on April
19 27 of 2016, new assessment from an ad hoc review committee was
20 neither requested nor performed on Nguyen's case. Assessment by
21 this committee is essential in view of the conflicting disagreements on
22 Nguyen's stature, impact and research accomplishments between the
23 department and the Dean's office. It should be mentioned that
24 assessment by an ad hoc review committee had previously been
25 requested on July 23, 2015 when the case was originally submitted.
26 However, when the case was resubmitted with significant materials
27 and new information (receipt of an NSF CAREER award, new NSF
28 grant, evidences of increased research productivity and graduation of

1 two Ph.D. students) on April 27 of 2016, surprisingly neither the same
2 ad hoc committee nor a new ad hoc committee was called in action to
3 re-evaluate the updated case. According to the CAP Chair Redmiles
4 on December 17 of 2015 and Vice Provost O'Dowd on January 25 of
5 2016, the updated case after July 1 of 2015 requires a fresh
6 assessment from all levels."

7 38. On November 17, 2016, Greg Evans, Chair of Committee on Privilege and
8 Tenure wrote a letter stating that:

9 "Dear Professor Nguyen, I am writing in my capacity as chair of the
10 Committee on Privilege and Tenure (CPT). The Committee met
11 recently to review the grievance you submitted on September 22,
12 2016 alleging that your rights and privileges were violated in the
13 tenure review process. CPT reviewed your grievance and determined
14 that there is not sufficient reason to believe that your rights and
15 privileges have been violated. As a result CPT has decided that your
16 case does not meet the prima facie standard as defined by Bylaw
17 335.B.2 and therefore does not warrant a formal evidentiary hearing."

18
19 39. On November 22, 2016, the thirteen (13) tenured faculty of the Department
20 of Chemical Engineering and Materials Science submitted a letter to the Dean,
21 Gregory Washington, entitled "concern with review process for promotion cases in
22 the Henry Samueli School of Engineering." Their concerns were consistent with
23 the September 22, 2016, NGUYEN's grievance filed with the Committee on
24 Privilege and Tenure. The Dean asserted strongly his policy on the Academic
25 Personnel Advisory Committee (APAC) that was established by himself in
26 October 2011. He mistook his local policy with the university policies adopted in
27 the University of California Academic Personnel Manual (APM). He must realize
28 that the inclusion of two letters by Associate Dean and the Dean gives extra weight

1 to the school-level review by the two administrators in violation of the shared
2 governance policy of the University (APM 015 Part I 5).

3 40. Any member of the Academic Senate may grieve to the Divisional Privilege
4 and Tenure Committee (hereafter, the Committee) that the member's rights or
5 privileges have been violated. In cases of personnel reviews involving tenure,
6 promotion, or reappointment, complaints may be based only on allegations that:
7 proper procedures were not followed, and/or the challenged decision was reached
8 on the basis of impermissible criteria, such as race, sex, or political conviction.
9 (Academic Senate Bylaw 335 A. 1. and 2.) On September 22, 2016, NGUYEN
10 filed a grievance with the Committee.

11 41. Bylaw 335 B. 4. provides that: "If the committee determines either that the
12 grievant has not made out a prima facie case or that after a preliminary review,
13 there is not sufficient reason to believe that the grievant's rights and privileges may
14 have been violated, it ***shall*** advise the grievant to that effect in a written
15 communication stating the reasons for its conclusion." (Bold italic is added.) The
16 Committee failed to discharge its mandatory duty under Bylaw 335 B. 4. The
17 Committee's decision letter did not include reasoned explanation of the
18 Committee's decision. There were no findings and no analysis to justify the
19 decision made. The Committee must have stated the reasons for its determination
20 and indicate the evidence relied on.

21 42. The Committee's perfunctory and arbitrary investigation and decision on the
22 NGUYEN's grievance report constructively deprived NGUYEN of the dignitary
23 interest guaranteed by the California Constitution, art. I, §7.

24 43. California Government Code §815.6 provides in pertinent part: "Where a
25 public entity is under a mandatory duty imposed by an enactment that is designed
26 to protect against the risk of a particular kind of injury, the public entity is liable
27 for an injury of that kind proximately caused by its failure to discharge the duty
28

1 unless the public entity establishes that it exercised reasonable diligence to
2 discharge the duty.”

3 44. The Committee failed to discharge its mandatory duty under Bylaw 335 B. 4
4 and California Government Code 11425.50.

5 45. The University of California Irvine Academic Personnel Procedure APP 3-
6 60 describes the components of a merit, promotion, mid-career appraisal, or tenure
7 review file, including the base file, confidential outside letters, and
8 recommendations from the department, chair, and dean.

9 46. APP 3-60 H.2. states that “The dean’s letter should be an independent
10 assessment of the case. In addition, the dean should sign and date the Academic
11 Personnel Action Summary form after summarizing his/her opinion as it relates to
12 the department recommendation: Yes, No, or Modify/Other Recommendation.”

13 47. The components of tenure review file are information and evaluation in the
14 following areas: (1) Teaching, (2) Research and Creative Work, (3) Professional
15 Competence and Activity, and (4) University and Public Service.

16 48. External letters are solicited in considering the promotion with tenure to
17 Associate Professor to evaluate the faculty member’s research performance during
18 his/her entire service as Assistant Professor. External reviewers are asked to
19 comment on “evidence of a productive and creative mind and that the candidate is
20 continuously and effectively engaged in creative activity of high quality and
21 significance.” With respect to professional competence and activity, “the
22 candidate’s professional activities should be scrutinized for evidence of
23 achievement and leadership in the field and of demonstrated progressiveness in the
24 development or utilization of new approaches and techniques for the solution of
25 professional problems.” (Academic Personnel Manual APM 210-1-d-(2-3).)

26 **The University’s Decision Is Unreasonable, Arbitrary, Capricious, and**
27 **Lacking in Evidentiary Support**
28

1 49. The Provost denied NGUYEN promotion and tenure, notwithstanding the
2 fact NGUYEN's records showed he overwhelmingly met all approved criteria.

3 50. The University further denied NGUYEN promotion and tenure based on the
4 recommendations of two administrators, the Associate Dean and the Dean of the
5 School of Engineering, not those of the Academic Senate Committees and the
6 Department Faculty. The Associate Dean is not authorized to write letters to be
7 filed in NGUYEN's dossier. However, his two letters were included in the dossier
8 and exerted undue influence to infect upper administrators' decision.

9 51. The University of California acted arbitrarily or capriciously because its
10 decision to deny NGUYEN's application for tenure and promotion is overtly and
11 patently in violation of the rules and requirements of the University and is
12 unreasonable and without foundation in fact.

13 52. The University's decision was unreasonable, arbitrary, or capricious because
14 Executive Vice Chancellor's decision was not supported by substantial competent
15 evidence because he primarily relied on the Associate Dean and Dean's
16 recommendation to deny Nguyen's application for tenure and promotion.

17
18 **STATEMENTS OF THE LAW**

19 53. Title IX provides, in relevant part, that "[n]o person in the United States
20 shall, on the basis of sex... be subjected to discrimination under any education
21 program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).
22 Title IX is enforceable through an implied private right of action for which money
23 damages are available.

24 54. Sexual orientation discrimination is not a category distinct from sex or
25 gender discrimination. (*Videckis v Pepperdine University*, 150 F.Supp.3d 1151
26 (Central District of California, 2015))

27 55. Discrimination on the basis of sex is defined as treating someone differently
28 simply because that person's sex is different from a similarly situated person.

1 56. NGUYEN asserts one claim under 42 U.S.C. §1983 against Defendants
2 JABBARI, WASHINGTON, O'DOWD, and LAVERNIA, in their individual
3 capacity, for violation of the Equal Protection Clause of the Fourteenth
4 Amendment.

5 57. The Fourteenth Amendment to the United States Constitution provides that
6 "[n]o state shall ... deny to any person within its jurisdiction the equal protection
7 of the laws." Denials of equal protection by any other person acting under color of
8 state law are actionable under 42 U.S.C. §1983. Sex discrimination by a state actor
9 can constitute a violation of the equal protection clause. Defendants' conduct
10 violated established constitutional rights of which a reasonable person in their
11 positions would have known.

12 58. The University of California has a clearly established policy that:
13 "Discrimination, including harassment, against University employees on political
14 grounds, or for reasons of race, color, religion, sex, ***sexual orientation***, gender,
15 gender expression, gender identity, ethnic origin, national origin, ancestry, marital
16 status, pregnancy, physical or mental disability, medical condition (cancer-related
17 or genetic characteristics), genetic information (including family medical history),
18 or service in the uniformed services as defined by the Uniformed Services
19 Employment and Reemployment Rights Act of 1994 (USERRA), as well as state
20 military and naval service, or, within the limits imposed by law or University
21 regulations, because of age or citizenship or for other arbitrary or personal
22 reasons." (Bold italics added.) The contours of the right are sufficiently clear that
23 a reasonable official would understand that what he or she is doing violates that
24 right. In light of the pre-existing law the unlawfulness of the individual
25 Defendants' conducts must be apparent.
26
27
28

FIRST CAUSE OF ACTION

Discrimination on the Basis of Sexual Orientation in Violation of 20 U.S.C. §1681 (Title IX) against Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“REGENTS”)

59. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs 1 through 58 of the complaint as if fully set forth herein.

60. The acts, and failure to act, perpetrated against Plaintiff NGUYEN amounted to unlawful discrimination on the basis of sex. One or more administrators or officials of the University, with authority to take corrective action on Plaintiff’s behalf, had actual notice of said discrimination and failed to adequately to respond, in violation of its own policies. Those failures amounted to deliberate indifference toward the unlawful discrimination that had occurred, was occurring.

61. Defendant REGENTS acted with deliberate indifference in deviating significantly from the standard of care outline by the University policies in the University of Academic Personnel Manual.

62. As a direct and proximate result of the above-stated actions by Defendant REGENTS, Plaintiff was injured in that he suffered deprivation of his Constitutional rights, personal dignity, dishonor, humiliation, damages to his professional and personal reputation, mental anguish and distress, false accusation of poor performance, and unlawful discharge.

63. As a direct and proximate result of REGENTS’ conduct, plaintiff suffered the following injuries and damages:

(a). Plaintiff was denied tenure and promotion to Associate Professor, resulting in lost pay and benefits including pension or retirement benefits.

(b). Plaintiff was discharged from employment with the University.

1 (c). Plaintiff has suffered and continues to suffer substantial humiliation, serious
2 mental anguish and emotional distress

3
4 **SECOND CAUSE OF ACTION**

5 **Retaliation on the Basis of Sexual Orientation in Violation of 20 U.S.C. §1681**
6 **(Title IX) against Defendant THE REGENTS OF THE UNIVERSITY OF**
7 **CALIFORNIA ("REGENTS")**
8

9 64. Plaintiff alleges and incorporates herein by this reference each and every
10 allegation set forth in all previous paragraphs of the complaint as if fully set forth
11 herein.

12 65. The acts, and failure to act, perpetrated against Plaintiff NGUYEN amounted
13 to unlawful retaliation for reporting discrimination on the basis of sex. One or
14 more administrators or officials of the University, with authority to take corrective
15 action on Plaintiff's behalf, had actual notice of said discrimination and failed to
16 adequately to respond, in violation of its own policies. Those failures amounted to
17 deliberate indifference toward the unlawful discrimination that had occurred, was
18 occurring.

19 66. Defendant REGENTS acted with deliberate indifference in deviating
20 significantly from the standard of care outline by the University policies in the
21 University of Academic Personnel Manual.

22 67. As a direct and proximate result of the above-stated actions by Defendant
23 REGENTS, Plaintiff was injured in that he suffered deprivation of his
24 Constitutional rights, personal dignity, dishonor, humiliation, damages to his
25 professional and personal reputation, mental anguish and distress, false accusation
26 of poor performance, and unlawful discharge.

27 68. As a direct and proximate result of REGENTS' conduct, plaintiff suffered
28 the following injuries and damages:

- 1 (a). Plaintiff was denied tenure and promotion to Associate Professor, resulting
2 in lost pay and benefits including pension or retirement benefits.
- 3 (b). Plaintiff was discharged from employment with the University.
- 4 (c). Plaintiff has suffered and continues to suffer substantial humiliation, serious
5 mental anguish and emotional distress

6

7 **THIRD CAUSE OF ACTION (Violation of Equal Protection by 42 U.S.C.**
8 **§1983; Discrimination and Retaliation) against Defendants JABBARI,**
9 **WASHINGTON, O'DOWD, LAVERNIA, in their individual capacity**

10

11 69. Plaintiff alleges and incorporates herein by this reference each and every
12 allegation set forth in all previous paragraphs of the complaint as if fully set forth
13 herein.

14 70. Plaintiff, as a gay person, was and is a member of a protected class under the
15 Equal Protection Clauses of the Fourteenth Amendment to the United States
16 Constitution. The various acts as alleged herein amounted to a violation of this
17 clearly established constitutionally protected rights, of which reasonable persons in
18 the defendants' position should have known. Defendants JABBARI,
19 WASHINGTON, O'DOWD, LAVERNIA are liable to Plaintiff NGUYEN,
20 pursuant to federal law 42 U.S.C. §1983.

21 71. Defendants JABBARI, WASHINGTON, O'DOWD, LAVERNIA
22 discriminated and retaliated against plaintiff and participated in discharging
23 plaintiff because of his sexual orientation.

24 72. All individual defendants discriminated against plaintiff by altering the
25 promotion and tenure process and denying plaintiff's promotion and tenure on the
26 basis of sexual orientation. All individual defendants each participated in the
27 alleged constitutional deprivation.

28

1 73. All individual defendants had sufficient influence on a personnel decision
2 such that discriminatory animus or bias is imputed to defendant REGENTS. It is
3 well established that a plaintiff claiming discrimination in the denial of academic
4 tenure need not prove intentional discrimination at every stage of the review
5 process. It plainly is permissible for a jury to conclude that an evaluation at any
6 level influenced the decision making process and thus allowed discrimination to
7 infect the ultimate decision.

8 74. At the time of the denial of plaintiff's application for tenure and promotion
9 defendants JABBARI, WASHINGTON, O'DOWD, LAVERNIA were acting
10 under color of the laws and regulations of the State of California and the
11 University of California.

12 75. As a direct and proximate result of the above-stated actions by Defendants
13 JABBARI, WASHINGTON, O'DOWD, and LAVERNIA, Plaintiff was injured in
14 that he suffered deprivation of his Constitutional rights, personal dignity, dishonor,
15 humiliation, damages to his professional and personal reputation, mental anguish
16 and distress, false accusation of poor performance, and unlawful discharge.

17 76. As a direct and proximate result of Defendants' conduct, plaintiff suffered
18 the following injuries and damages:

19 (a). Plaintiff was denied tenure and promotion to Associate Professor, resulting
20 in lost pay and benefits including pension or retirement benefits.

21 (b). Plaintiff was discharged from employment with the University.

22 (c). Plaintiff has suffered and continues to suffer substantial humiliation, serious
23 mental anguish and emotional distress

24 **THE REQUESTED RELIEF**

25
26 WHEREFORE, plaintiff prays judgment against defendants as follows:
27
28

1. For a declaratory judgment that Defendants JABBARI, WASHINGTON, O'DOWD and LAVERNIA's discrimination and retaliatory employment actions taken against plaintiff were unlawful and abridged the rights under the Equal Protection under 42 U.S.C. §1983.
2. For a declaratory judgment that Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA's discrimination and retaliatory employment actions taken against plaintiff were unlawful under Title IX, 20 U.S.C. § 1681(a).
3. For a declaratory judgment that the Defendants JABBARI, WASHINGTON, O'DOWD and LAVERNIA's discrimination and retaliatory employment actions taken against plaintiff were with malicious intent and the defendants are individually liable for damages.
4. For injunctive relief clearing employment record, and directing the regents to remove all false and stigmatizing statements, and false discharge, from plaintiff's files. For a prospective injunctive relief, reinstatement.
5. For compensatory damages. The defendants are jointly and severally liable for the compensatory damages.
6. For mental distress against Defendants REGENTS, JABBARI, WASHINGTON, O'DOWD and LAVERNIA.
7. For punitive damages against Defendants JABBARI, WASHINGTON, O'DOWD and LAVERNIA.
8. For costs and attorney's fees pursuant to 42 U.S.C. §1988, and 20 U.S.C. § 1681.
9. For prejudgment interest on lost wages and benefits.
10. For post judgment interest on all sums, including attorney fees.
11. For all other relief the court deems appropriate.

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1 **DEMAND FOR JURY TRIAL**

2
3 Plaintiff HUNG NGUYEN hereby demands a jury trial.
4

5 Dated: March 10, 2017

Respectfully submitted,

6
7 By: _____

8 Juan Hong

9 Attorney for Plaintiff HUNG NGUYEN
Law Office of Juan Hong, A Law Corp.

10 4199 Campus Drive, Suite 550

Irvine, CA 92612

11 Phone: (949)509-6505

12 Fax: (949) 335-6647

13 Email: jhong48@gmail.com
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